

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 53 (C) of 2020

(Arising out of order of the learned Addl. CST (Appeal),
Balasore in Appeal No. AA – 01/BAC – 2020-21 (CST),
disposed of on 28.08.2020)

Present: **Shri G.C. Behera, Chairman**

M/s. Emami Paper Mills Ltd.,
Balgopalpur, Rasalpur, Balasore ... Appellant

-Versus-

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack ... Respondent

For the Appellant : Sri Mukesh Agarwal, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 29.03.2023 *** Date of order : 18.04.2023

ORDER

Dealer is in appeal against the order dated 28.08.2020 of the Addl. Commissioner of Sales Tax (Appeal), Balasore (hereinafter called as ‘First Appellate Authority’) in F A No. AA - 01/BAC – 2020-21 (CST) enhancing the refund amount as per recomputation order of the Deputy Commissioner of Sales Tax, CT & GST Circle, Balasore (in short, ‘Assessing Authority’).

2. The facts of the case, in short, are that –

M/s. Emami Paper Mills Ltd. carries on business in manufacturing and selling of newsprint, writing and printing paper & paper board having its manufacturing unit at Balgopalpur, Balasore. The assessment relates to the period 01.04.2016 to 31.03.2017. At the time of recomputation, since the

Dealer failed to produce 'C' form for ₹1,33,10,936.00, the Assessing Authority levied appropriate tax at State rate which resulted in extra demand of ₹1,84,875.00 including interest.

In appeal, the Dealer furnished 8 nos. of 'C' forms for ₹71,22,226.00. So, the First Appellate Authority remanded the matter to the Assessing Authority to verify the declaration forms and recalculate the tax and interest. Accordingly, the Assessing Authority recomputed the tax liability of the Dealer and allowed refund of ₹62,343.00 in the assessment proceeding u/r. 12(3) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority accepted two 'C' forms for ₹12,24,093.00 filed before him and enhanced the refund amount to ₹1,16,174.00 on computation. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers the appeal. Hence, the appeal.

The State files cross-objection supporting the impugned order of the First Appellate Authority to be just and proper in the facts and circumstances of the case.

3. The learned Counsel for the Dealer submits that levy of full rate of tax @ 5% on ₹49,64,617.00 by the forum below for want of declaration forms. The Dealer was not provided sufficient opportunity to furnish the same and the order was passed arbitrarily and illegally. He further submits that imposition of unilateral levy of penal interest amounting to ₹56,887.00 is also illegal and without authority of law on the ground that the Dealer has paid more tax than the tax assessed. He submits that the ingredients for levy of interest u/s. 9(2B) of the CST Act read with Section 34(1) do not attract to its case and thus, levy of interest is liable to be deleted as per law. In

course of hearing, learned Counsel for the Dealer also files photo copy of 3 nos. of 'C' form for ₹48,01,808.00 along with petition for acceptance of the same. Supporting the contentions, he relies on the decisions of the Hon'ble Court in case of *Sahu Trading Co. v. State of Orissa*, [1983] 54 STC 122 (Orissa), and the Hon'ble Apex Court in case of *State of Orissa v. Hyderabad Asbestos Cement Production Ltd.*, [1994] 94 STC 410 (SC).

4. Per contra, learned Standing Counsel (CT) for the State vehemently objects the contentions of the Dealer and submits that the forums below had allowed sufficient opportunity to furnish the declarations in 'C' & 'F' form, but the Dealer did not avail the same. So, the First Appellate Authority and the Assessing Authority rightly levied tax and interest for the amount due to non-submission of declaration forms. He further submits that the Dealer filed 'C' declaration forms before this forum at belated stage. So, he submits that the impugned order does not suffer from infirmity and the same requires no interference in appeal.

5. Heard the rival submissions and gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on record. It is not in dispute that the Dealer could not file statutory declaration forms at the time of assessment. The Dealer filed some statutory forms at different stages. At this stage also, the Dealer filed photo copy of 3 nos. of 'C' form for ₹48,01,808.00 for acceptance. It is apparent that the Dealer is negligent and is not filing the wanting forms in time. However, the Dealer has filed 3 nos. of 'C' form before this Tribunal and the Dealer shall be prejudiced, if the same is not considered. For the interest of justice, the said 'C' forms are considered and the matter is remanded back to the Assessing Authority for acceptance after due verification as per law. The Dealer is at liberty to file all the original statutory forms, if any, including these three 'C' forms or else no more opportunity shall be granted to it in any circumstances in future.

The Assessing Authority shall recompute the tax liability and the interest as per the provisions of law. Hence, it is ordered.

6. Resultantly, the appeal stands allowed and the impugned order of the First Appellate Authority is hereby set aside. The matter is remanded to the Assessing Authority for due verification of 'C' forms in original to be produced by the Dealer and acceptance of the same, if found to be proper and computation of tax liability afresh as per law within a period of three months from the date of receipt of this order. The Dealer is at liberty to file all wanting statutory forms, if any, before the Assessing Authority or else no further time shall be given in any circumstances in future. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

**Sd/-
(G.C. Behera)
Chairman**

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(G.C. Behera)
Chairman**